REMARKS/ARGUMENTS

Remarks:

Claims 1-17 and 20-27 remain in this application. Claims 18 and 19 have been cancelled. Applicant respectfully submits that no new matter has been introduced into the subject application. In this regard, the present amendments made to the claims are supported throughout the specification, for example, at page 4, last paragraph, "If, however, the artist selected by the fan fails to become BoomBacked the fan's contributions can either be refunded or transferred to another artist. Alternatively, the fan can elect to keep the funds in the BoomBacker system, in a non-artist account for a predetermined period of time." Additional support can be found, for example, at page 8, first paragraph, which refers to Figure 4, "However, if the artist does not obtain that level of predefined support, the consumer is entitled to a refund, at 325, of their contribution or provided an opportunity, at 330, to redistribute their contribution, at 335, to another artist. If the consumer decides neither to elect a refund, at 340, or to contribute, at 345, to another artist, he or she can choose to leave the money, at 345, on the system undistributed for a period of time." Further consideration and allowance of the instant application are respectfully requested.

Arguments:

A. Claims 1, 7, 9, 10-13, 15, 17, 20, 22 and 24-26 were rejected under 35 U.S.C. § 102(e)[1] as anticipated by Riffage.com and as described by four separate articles:

"Curtain Closes for Riffage.com" by Lee (hereafter "Reference A");

"Riffage.com Picks up Indie Record Label" by Borland (hereafter "Reference B");

"Bands and Fans Rub Elbows on Riffage.com" by McIntosh (hereafter "Reference C"); and

[1] Applicant respectfully assumes that the Examiner meant to base the anticipation rejections of the Office Action under 35 U.S.C. § 102(b) and not § 102(e). In either case, applicant's arguments for traversal are the same.

Screenshot of Riffage.com, (hereafter "Reference D").

In particular, the Examiner alleges that the above-references report a method for determining the market demand for an artist by receiving user input to determine which artist to select from a pool of artists, determining the market demand for said selected artist based on users contributing to a fund for said artist and identifying artists that attain a predefined level of user contributions. Applicants respectfully disagree.

The present invention provides users the option of a refund, a redistribution of their contribution to another artist from the pool of artists or to leave their contribution undistributed. In contrast, none of the references describing Riffage.com make any mention or suggestion that user contributions can be refunded, redistributed or undistributed when artist funds do not attain a predefined level of contributions. Since contributions to Riffage.com are in exchange for merchandise representing particular artists (*i.e.,* CD's, t-shirts, downloads), it would be unexpected that Riffage.com would then allow users to redistribute their contributions to another artist or to leave their contributions undistributed. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California,* 814 F.2d 628, 631 (Fed. Cir. 1987). Thus, applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

B. Claim 27 was rejected under 35 U.S.C. § 102(e) as being anticipated by "TV media go from covering the news to making it" (PR Newswire), hereafter called "TV media". The Examiner contends that this reference reports a method for determining the market demand for an artist by receiving financial input from patrons for saving the Pennsylvania Ballet. Applicants respectfully disagree.

The "TV media" reference does not mention a method for determining market demand of an artist where users can redistribute their financial contributions to another artist within a pool of artists or where users can leave their financial contributions undistributed. The "TV media" reference only states "If we're not successful, everyone who contributed donations will be entitled to a refund." (*See,* page 2). There is no suggestion that the patrons will be given an

option to redistribute their donations to another artist from a pool of artists. Thus, applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

C. Claims 2, 3, 8, 14, 16, 21 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Riffage.com as combined with the reference "7up launches a one-of-a-kind Internet Music Program (Business Wire)," (hereafter called "7up reference"). Applicants respectfully disagree.

The 7up reference reports a contest where internet votes determine the winning band. However, the 7up reference does not rectify the deficiency of Riffage.com, where if the contributions do not attain a predefined level, then the user is provided the option of redistributing his/her contribution to another artist, a refund or to leave the contribution undistributed. Thus, the combination of Riffage.com and the 7up reference does not establish a *prima facie* case of obviousness over the claimed invention because "all the limitations must be taught or suggested by the prior art." *In re Royka,*490 F.2d 981 (CCPA 1974). Applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

D. Claims 4-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Riffage.com. Applicants respectively disagree.

As argued previously, Riffage.com makes no mention or suggestion that if contributions do not attain a predefined level, then the user is provided the option of redistributing his/her contribution to another artist, a refund or to leave the contribution undistributed. As all the limitations must be taught or suggested, applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

Secondly, the Examiner argues that it would be obvious to modify Riffage.com such that an artist is paid only after reaching a predefined level of contribution because "it would be obvious to one of ordinary skill in the art that an artist does not make enough money to pay for the service should not receive a profit." Applicant contends that this reasoning improperly changes the principle of operation of Riffage.com. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the reference are not sufficient to render the claims *prima facie* obvious."

In re Ratti, 270 F.2d 810 (CCPA 1959). Riffage.com makes no mention or suggestion that the contributions made to Riffage.com, upon reaching a predefined amount, could then be used to produce and commercialize artists. Rather, Riffage.com uses a direct exchange between their artists, regardless of the level of contributions to a particular artist: "Riffage.com exacts a scant 15-percent cut of all sales and waives all set-up fees. Riffage.com plans to make up the difference with advertising fees." (Reference C, top of page 2).

E. Claims 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Riffage.com in view of "TV media goes from covering the news to making it" ("TV media"). Applicant respectfully disagrees.

Although claims 18 and 19 have been cancelled, their subject matter have been included in the currently amended claims. The Examiner states that "it would have been obvious to one of ordinary skill in the art at the time of the invention to redistribute the contributions in the event that an artist did not attain a predefined level of contributions in order to increase the probability of a different artist succeeding at attaining the predefined level of contributions." However, as argued previously, neither Riffage.com nor the TV media reference makes any suggestion or mention that users are provided the option to redistribute their contributions when the artist to whom the contribution was made did not attain a predefined level of contribution. In the case of Riffage.com, the user immediately receives physical consideration for their contribution, *i.e.* CD's, t-shirts, etc., and as such, there is no reason why it would be obvious that Riffage.com would then allow users to redistribute their contribution. As for the TV media reference, if the patron receives a refund of his/her donation, the patron is not provided an option from the same system to redistribute their donation to another artist from a pool of artists. Neither Riffage.com nor TV media (nor the 7up reference) provide a method or system that determines market demand of artists by the contribution of users to particular artists, and where the contributions to a particular artist are insufficient, then provides users the *option* of (i) redistributing their contributions to another artist within the pool of artists provided by the method/system, (ii) a refund or (iii) leaving their contribution undistributed for a period of time. Applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

CONCLUSION

For all the reasons advanced above, Applicant respectfully submits that the rejections have been overcome and should be withdrawn. Consequently, issuance of a Notice of Allowance is respectfully requested.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees that may be required for this Amendment, or credit any overpayment, to deposit account number 08-0219.

In the event that an extension of time is required the Commissioner is requested to grant a petition for that extension which is required to make this response timely, and is hereby authorized to charge any fee for such, to deposit account number 08-0219.

Respectfully submitted,

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